

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place, Room 503
Boston, MA 02108
617-727-2293

LINDA HARRISON,
Appellant

v.

D1-14-117

DEPARTMENT OF CHILDREN
AND FAMILIES,
Respondent

Appearance for Appellant:

Neil Osborne, Esq.
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Appearance for Respondent:

Donna Morin
Assistant Director of Labor Relations
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Services
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Commissioner:

Cynthia A. Ittleman, Esq.¹

DECISION

On May 28, 2014, the Appellant, Linda Harrison (“Ms. Harrison”), pursuant to G.L. c. 31, § 43, filed this appeal with the Civil Service Commission (“Commission”) contesting the decision of the Department of Children and Families (“DCF” or “Respondent”) to terminate her from her position as a Clerk V. A pre-hearing conference was held at the Commission on July 1, 2014 and a full hearing was held at the same location on September 3, 2014. Neither party

¹ The Commission acknowledges the assistance of Law Clerk Megan Bertino in preparing this decision.

requested a public hearing so the hearing was deemed private. The hearing was digitally recorded and copies were provided to the parties. The parties submitted proposed decisions.

FINDINGS OF FACT

Seventeen (17) exhibits were entered into evidence at the hearing. Based on these exhibits, the testimony of the following witnesses:

Called by DCF:

- Lieutenant Edward Williams, Brockton Fire Department, Inspector/Investigator
- Doreen Gwozdz, Special Investigator, DCF
- James Nolan, Special Investigator, DCF
- Susan Devine, Regional Counsel, DCF Southern Region
- Andrew Rome, General Counsel, DCF²

Called by Ms. Harrison:

- Linda Harrison, Appellant

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations and policies, the credible testimony and reasonable inferences from the evidence adduced, a preponderance of the evidence establishes the following findings of fact:

1. Ms. Harrison lives in Brockton, Massachusetts and has been employed with the DCF since 1982³, when she was hired provisionally as a Senior Clerk and Typist. She was provisionally promoted to the position of Principal Clerk in 1984. She was permanently appointed to the position of Clerk III in 1999 from a Certification. She was provisionally promoted to Clerk IV in 2006 and provisionally promoted to the position of Clerk V in the DCF Southern Region's Legal Office in Brockton. (Exhibits 5 – 8)

² Attorney Rome conducted the DCF hearing. Exhibit 2.

³ In 1982, DCF's statutory name was the Department of Social Services.

2. At all pertinent times, the Appellant lived in a one-family house⁴ with her son (“Mr. O”), her son’s girlfriend (“Ms. M”), and two children aged five (5) months and two (2) years old. Ms. Harrison lives on the second floor while Mr. O, Ms. M and the children live on the first floor. On May 16, 2014, Ms. Harrison’s employment was terminated. Ms. Harrison is a member of the National Association of Government Employees (“NAGE”), Unit 1. (Stipulated Facts; Exhibits 2, 11 (DCF Child Abuse/Neglect Investigation⁵) and 12⁶; and Testimony of DCF General Counsel Andrew Rome (“Attorney Rome”))
3. On April 10, 2014 at 5:45 AM, the Massachusetts State Police (“State Police”) and the Brockton Police Department (“BPD”) entered Ms. Harrison’s residence to execute a search warrant related to a drug investigation. (Exhibit 11)
4. The State Police and BPD raid recovered narcotics and a loaded handgun during the search of Ms. Harrison’s residence. (Exhibit 11; Testimony of Williams)
5. Ms. Harrison stated to BPD that she worked for DCF. (Exhibit 11)
6. During the search of Ms. Harrison’s home, the State Police found a number of adults there, including Ms. Harrison. They also found dogs, cats and a ferret, a lot of clutter and foul odors from animal feces and other substances at the home. In addition, there were dishes piled high in the sink, holes in the floor and unrepaired bullet holes on the outside of the home. The children’s cribs were filled with a variety of items, such as clothing and debris, and the children were dirty. (Exhibit 11)

⁴ The home was a two-family home that was converted to a single-family home. (Exhibit 11)

⁵ Investigators spoke with those involved including members of the family and members of the State Police, Brockton Police Department and the Brockton Fire Department.

⁶ Exhibit 12 includes black and white copies of photographs taken of Ms. Harrison’s home taken by someone from the Board of Health who was with Brockton Fire Department Lieutenant Williams when he went to the home after the police raid on April 10, 2014. The photographer did not attend the Commission hearing. The parties stipulated at the Commission hearing that Lieutenant Williams did not know what the home looked like prior to the raid.

7. Further, the overhang above the door was about to fall off and the paint on the stairs inside looked sanded or scraped away, as though it had not been worked on for some time. A number of cabinet doors were missing in the kitchen. (Testimony of Investigator Nolan)
8. One of the State Police Troopers involved in executing the warrant at Ms. Harrison's house was instructed by a superior to initiate a G.L. c. 119, s. 51A report pertaining to abuse and/or neglect of a child as a result of the conditions he found there. (Exhibit 11)
9. G.L. c. 119, s. 51A provides, in pertinent part,

(a) A mandated reporter who, in his professional capacity, has reasonable cause to believe that a child is suffering physical or emotional injury resulting from: (i) abuse inflicted upon him which causes harm or substantial risk of harm to the child's health or welfare, including sexual abuse; (ii) neglect, including malnutrition; (iii) physical dependence upon an addictive drug at birth, shall immediately communicate with the department orally and, within 48 hours, shall file a written report with the department detailing the suspected abuse or neglect; or (iv) being a sexually exploited child; or (v) being a human trafficking victim as defined by section 20M of chapter 233. ...

(c) Notwithstanding subsection (g), whoever violates this section shall be punished by a fine of not more than \$1,000. Whoever knowingly and willfully files a frivolous report of child abuse or neglect under this section shall be punished by: (i) a fine of not more than \$2,000 for the first offense; (ii) imprisonment in a house of correction for not more than 6 months and a fine of not more than \$2,000 for the second offense; and (iii) imprisonment in a house of correction for not more than 2 1/2 years and a fine of not more than \$2,000 for the third and subsequent offenses.

Id.

10. G.L. c. 119, s. 51B(3) provides, in pertinent part,

(c) If the department has reasonable cause to believe a child's health or safety is in immediate danger from abuse or neglect, the department shall take a child into immediate temporary custody if it has reasonable cause to believe that the removal is necessary to protect the child from abuse or neglect.

Id.

11. On April 10, 2014, after its involvement in executing the warrant at Ms. Harrison's house, the BPD contacted the Brockton Fire Department ("BFD"), who then contacted

the fire prevention inspector and investigator, Lieutenant Edward R. Williams

(“Lieutenant Williams”), because of code enforcement issues presented at Ms. Harrison’s home. (Testimony of Williams; Exhibit 11)

12. Lieutenant Williams arrived to inspect Ms. Harrison’s home at approximately 8:00 A.M.

on April 10, 2014. He noted that an egress was blocked by a snow blower with a gas tank. There were some treads and many balusters missing from the indoor staircase joining the first and second floors. In the kitchen, trash was piled up, it appeared grimy and the floor in front of the kitchen was down to plywood. The BPD had pulled the refrigerator away from the wall and it was filthy. (Testimony of Williams)

13. In view of his observations, Lieutenant Williams attempted to reach DCF by phone but was unsuccessful. Thereafter, on the day of April 10, 2104, Lieutenant Williams sent an email message to DCF requesting that it open an investigation regarding the welfare of the children living in Ms. Harrison’s house. He included a link to the many pictures his coworker took at the house. (Exhibit 12⁷; Testimony of Williams)

14. Lieutenant Williams declared the home uninhabitable and wrote a letter before leaving the home after the inspection on April 10, 2014, ordering:

(1) Because of blocked egresses, from every door. Egresses blocked by snow blowers, trash debris and combustibles. (2) Lack of properly working smoke alarms (sic) and CO alarms. (3) Heavy fire load which is a condition that would cause or contribute to the cause of a fire. (4) Stairing (sic) front to second floor dangerous because of broken treads. (5) Disconnect all extention (sic) cord and power cords. (6) Can’t live the house, can be in house daylight hours to clean & repair.

and gave it to Ms. Harrison after signing it. (Testimony of Lieutenant Williams; Exhibit 13)

⁷ An email message from the Brockton Fire Department describing the condition of the home states, “I realize that the PD may have caused some of the mess, but the outright grime, and dirt was awful. The condition of the house as a whole is repulsive. You can see bullet hole ..., grime and dirt lining the kitchen and more. I am sure the house would test positive for lead also.” (Exhibit 12)

15. Lieutenant Williams left Ms. Harrison's house at approximately 11:00 A.M. (Testimony of Williams)
16. Also on April 10, 2014, following these aforementioned events, Special Investigator Doreen Gwozdz ("Investigator Gwozdz") and Special Investigator James Nolan ("Investigator Nolan") were assigned to investigate the State Police and Lieutenant Williams' claims. (Testimony of Gwozdz)
17. The day they were assigned, Investigators Gwozdz and Nolan called individuals who may know information relevant to the case. They also contacted DCF's Legal Office and decided to remove the children residing in Ms. Harrison's house on an emergency basis under G.L. c. 119, s. 51B(c). Investigators are not required to call the General Counsel's office for approval of such actions, nor are they required to get the permission of the court to remove children in an emergency situation. (Testimony of Gwozdz and Nolan)
18. Investigator Nolan called the children's maternal grandmother to try to contact the children's mother to discuss the children. In addition, the Investigators performed a DCF search and criminal records check on the children's maternal grandparents so that the children could be placed there when the children were removed, as opposed to placing them in temporary housing outside of the family. (Testimony of Gwozdz; Exhibit 11)
19. Investigator Gwozdz contacted the police to accompany her and Inspector Nolan to Ms. Harrison's house in order to remove the children later on April 10, 2014. (Testimony of Nolan)
20. After arriving at Ms. Harrison's house with the police, the Investigators asked Ms. Harrison the location of her grandchildren and she denied knowing where they were, saying that they left with their mother earlier in the morning and were not allowed in the

house per order of the BFD. (Testimony of Gwozdz and Nolan) A DCF brochure, “A Family’s Guide to Protective Services for Children, states, in pertinent part, “You have the right to refuse to allow DCF to visit your home. We understand how hard it is to have the privacy of your home open to someone you don’t know. However, when a report of abuse or neglect is received, DCF is required by law to meet with parents and all children in the home.” (Exhibit 17)

21. Ms. M’s car was parked across the street but in front of Ms. Harrison’s house.

(Testimony of Nolan)

22. Ms. Harrison argued extensively and angrily with the Investigators and refused to allow Investigator Gwozdz to enter her house. Ms. Harrison allowed Investigator Nolan and a BPD officer to enter the house very briefly in order to confirm that the children were not present. Investigator Nolan confirmed Lieutenant Williams’ information concerning the conditions of the house. Investigator Gwozdz waited outside. (Testimony of Gwozdz; Exhibit 11)

23. Ms. Harrison brought Investigator Nolan through the first floor of the house quickly but she refused him entry to the second floor. (Testimony of Nolan; Exhibit 11)

24. While inside the house with Investigator Nolan, Ms. Harrison stated, “I know how people at DCF work and [they] are not to be trusted.” (Testimony of Nolan; Exhibit 11)

25. Investigator Nolan did not find the children inside. (Testimony of Nolan; Exhibit 11)

26. Just before Investigators Gwozdz and Nolan were about to leave Ms. Harrison’s house, the maternal grandmother of the two children arrived, stating that she knew the location of the children. The maternal grandmother entered the house and brought the two children and Ms. M outside. (Testimony of Gwozdz; Exhibit 11)

27. On April 10, 2014, Ms. Harrison, in the presence of her sister, the children's paternal grandfather, and Investigators Gwozdz and Nolan, stated, "I need a witness because I know how you [DCF] people are." (Testimony of Gwozdz)
28. The children and Ms. M had been on the second floor of Ms. Harrison's house.
(Testimony of Nolan; Exhibit 11)
29. The Collective Bargaining Agreement ("CBA") for NAGE contains a Code of Conduct. Article three (3), Section B "Conformance to Laws" states, in pertinent part, that "[e]mployees shall obey the laws of the United States and the Commonwealth of Massachusetts." (Testimony of Rome; Exhibit 16)
30. Article three, section D "Conduct, Attitude and Demeanor" of the Code of Conduct states that "all employees shall avoid any actions which may result in or create the reasonable basis for the impression of: (a) using public office for private gain, (b) giving preferential treatment to any citizen, . . . [and] (d) using one's official position to harass or intimidate any person or entity outside the course of official duties." (Testimony of Rome; Exhibit 16)
31. On April 14, 2014, DCF wrote to the Appellant stating, *inter alia*,

" ... this letter is to confirm that a charge of Child Abuse/Neglect (51A) was filed against you on or about April 14, 2014. As you know, you will be contacted by the Special Investigations Unit as part of the investigation into this matter in the near future.
Please be advised that effective immediately and until further notice you will be assigned to administrative duties. This means that you will report to the office each workday from 8:45a.m. to 5:00p.m. to perform duties as assigned by your supervisor. Your request to take April 14, 2014 through and including April 18, 2014 off is approved. ...
I urge you to contact CMG Associates, the Department's employee assistance program"
(Exhibit 3)

32. By letter dated April 18, 2014, DCF notified the Appellant that she was placed on administrative leave with pay. (Exhibit 4)

33. A hearing was held on May 8, 2014 by DCF in order to establish whether there was just cause to terminate Ms. Harrison's employment. The reasons presented to Ms. Harrison in a letter dated May 1, 2014 were as follows:

- "1) On or about April 10, 2014, you lied about the whereabouts of your grandchildren and attempted to hide your grandchildren from Department Investigators.
- 2) On or about April 10, 2014 and April 15, 2014, you were uncooperative with Department investigators.
- 3) On or about April 10, 2014, you attempted to use your position with the Department for personal gain and/or to intimidate Department investigators and/or police officers."

(Stipulated Facts and Exhibit 1)

34. By letter dated May 14, 2014, DCF terminated the Appellant's employment stating, in pertinent part,

- a. on April 10, 2014, police "executed a search warrant of your residence as part of a narcotics investigation" wherein police found "an unsecured loaded weapon and narcotics" and the Appellant and her family "were ordered to vacate your home as it was deemed uninhabitable due to its deplorable and unsafe conditions. It was reported, in part, that your home was extremely, had bullet holes ... was extremely cluttered, entrances were blocked by debris, and windows were covered with mattresses and board[.] During this search, you informed the police that you were an employee for the [DCF]."
- b. "The authorities contacted the [DCF] and a report was filed pursuant to M.G.L. c. 119, s. 51A (51A) against your adult son and his girlfriend on behalf of their two (2) year old child and five (5) month old infant (your grandchildren) who also resided in your home. When Department investigators reported to your home later that day to being their investigation you were hostile and uncooperative. You initially refused to allow the investigators to gain entry into your house; you denied knowing the whereabouts of your grandchildren; and, you called the investigators liars. When you eventually allowed one of the investigators to enter your house you limited his time in the house and limited his movement within the house to the first floor only."

- c. “Subsequent to the investigator’s search of your home, the children’s maternal grandparents arrived to (sic) your house. The maternal grandmother entered your house and exited with both children who were reportedly being harbored by you and their mother in the second floor of your home. Both children were dirty ...
- d. “On April 14, 2014, a report was filed pursuant to M.G.L. c. 119, s. 51A (51A) against you. The allegations were related to the April 10, 2014 events in your home and cited the possible neglect of your two young grandchildren due to the activities in your home and the deplorable condition of your home.”
- e. “At the May 8 hearing, you denied informing the police that you worked for the Department ... You denied knowing that your grandchildren were on the second floor of your house with their mother. ...”
- f. “You work for an agency whose mission and purpose is to ensure the care and protection of the Commonwealth’s children, you allowed your very young grandchildren to live in deplorable and unsafe conditions. When the Department responded to this situation in an attempt to ensure your grandchildren were safe, you aided in harboring them from investigators. Your attempt to thwart the Department’s investigation could have resulted in hindering your employer’s mission to protect these very vulnerable children. ... Given the serious nature of this matter, the Department no longer has confidence in your ability to work with the Department to carry out its critical mission. ...”
(Exhibit 2)

35. The Appellant filed the instant appeal on May 29, 2014. (Administrative Notice)

36. At the Commission hearing, DCF reported that the 51A case against the Appellant was closed although the remainder of the case remained open. The Appellant did not request a hearing for internal review of the 51A case. DCF has a Central Registry of 51A cases in which the Appellant’s name appears because of the report against her.

When considering job applicants, DCF checks the DCF Central Registry and criminal offender and sex offender records. Following her termination, Ms. Harrison could apply for employment at DCF but she would need to apply for a waiver, which is decided by DCF General Counsel with approval by the DCF Commissioner, but they will not grant Ms. Harrison a waiver because of the events leading to her termination.

(Testimony of Rome)

Legal Standard

Under G.L. c. 31, §43, a tenured civil service employee aggrieved by a disciplinary decision of an appointing authority made pursuant to G.L.c.31, §41, may appeal to the Commission. The role of the Civil Service in considering such an appeal is to determine “whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” City of Cambridge v. Civil Serv. Comm’n, 43 Mass.App.Ct. 300, 304 (1997); Town of Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983). Reasonable justification is established when such an action is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and correct rules of law.” Comm’rs of Civil Serv. v. Mun. Ct., 359 Mass. 211, 214 (1971) (quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 485 (1928)).

The Commission determines justification for discipline by inquiring “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983); Sch. Comm. of Brockton v. Civil Serv. Comm’n, 43 Mass.App.Ct. 486, 488 (1997). If the employee establishes that the conduct for which she was disciplined was not “reasonably related” to her “fitness to perform” in her position, the discipline “shall not be sustained” G.L. c. 31, s. 43; *see* School Committee of Brockton v. Civil Service Commission, 43 Mass.App.Ct. 486, 488 (1983)(citing McIsaac v. Civil Service Commission, 38 Mass.App.Ct. 473, 475 (1975)). Further, the Commission may modify any penalty imposed by the appointing authority where appropriate. Id.

The Appointing Authority's burden of proof is one of a preponderance of the evidence, which is established "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956). "In its review, the commission is to find the facts afresh, and in doing so, the commission is not limited to examining the evidence that was before the appointing authority." Id. at 187 (quoting City of Leominster v. Stratton, 58 Mass.App.Ct. 726, 728, *rev. den.*, 440 Mass. 1108 (2003)). "The commission's task, however, is not to be accomplished on a wholly blank slate." Falmouth v. Civil Serv. Comm'n, 447 Mass. 814, 823 (2006). Further, "[t]he commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision." Id. at 824 (quoting Watertown, at 334).

The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision." Watertown at 332; Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-28 (2003).

Analysis

G.L. c. 119, s. 1, as amended by St. 2008, Chapter 176, s. 82, establishes the Commonwealth's policy for the care and protection of children, in pertinent part, as follows,

It is hereby declared to be the policy of this commonwealth to direct its efforts, first, to the strengthening and encouragement of family life for the care and protection of children; to assist and encourage the use by any family of all available resources to this end; and to provide substitute care of children only when the family itself or the resources

available to the family are unable to provide the necessary care and protection to insure the rights of any child to sound health and normal physical, mental, spiritual and moral development. **The purpose of this chapter is to insure that the children of the commonwealth are protected against the harmful effects resulting from the absence, inability, inadequacy or destructive behavior of parents or parent substitutes,** and to assure good substitute parental care in the event of the absence, temporary or permanent inability or unfitness of parents to provide care and protection for their children. **The health and safety of the child shall be of paramount concern** and shall include the long-term well-being of the child.
Id.

The same statute charges DCF in this regard, in pertinent part, as follows,

In all matters and decisions by the department of children and families, the policy of the department, as applied to children in its care and protection or children who receive its services, **shall be to define best interests of the child as that which shall include, but not be limited to, considerations of precipitating factors and previous conditions leading to any decisions made in proceedings related to the past, current and future status of the child, the current state of the factors and conditions together with an assessment of the likelihood of their amelioration or elimination**
Id. (emphasis added)

The Appellant, as an employee of the DCF Legal Office, was an integral part of the state entity charged with enforcing the law securing the care and protection of children in the Commonwealth.

At the Commission hearing, the Appellant called no witnesses other than herself; she denied the allegations against her and asserted that her actions were justified and that she was not a mandated reporter pursuant to G.L. c. 119, s. 51A. Further, she argues that DCF employees acted in a conspiracy against her, she was treated in a disparate manner and that her disparaging remarks about DCF merely reflect an opinion held in certain communities. However, a preponderance of the evidence shows that the Respondent has established just cause to discipline the Appellant for substantial misconduct that adversely affects the public interest by impairing the efficiency of public service based on her alarming conduct.

On April 10, 2014, police executed a search warrant at Ms. Harrison's home in relation to a drug investigation. Living in Ms. Harrison's house with her were her son, Ms. M and two small children. What police found, as confirmed by the BFD and a thorough DCF investigation, were uninhabitable and deplorable conditions, including a loaded gun, narcotics, bullet holes, filth and a variety of other unsafe conditions and foul odors. In view of the conditions at Ms. Harrison's house, DCF Investigators went there later in the day with a police escort and attempted to find the children. Ms. Harrison argued angrily and extensively with the Investigators, eventually allowing only one Investigator in the house briefly and refusing him access to the second floor of the house. When asked the location of the children, Ms. Harrison said that they were not in the house. Shortly thereafter, the children's maternal grandmother arrived, entered the house and exited with the children, having found them on the second floor of the house, where Ms. Harrison had prevented an Investigator from going.

During the events on April 10, 2014, Ms. Harrison told police that she worked at DCF. While DCF alleges that such statement violated the cited Code of Conduct, it is not clear to me that she mentioned this to the police for private gain, for preferential treatment, or to harass or intimidate them as provided in the Code of Conduct. As a DCF employee, Ms. Harrison was likely well aware of the authority of police regarding allegations of abuse and/or neglect of children and that their actions would not be swayed by her statement. Nor do I find it likely that police would be harassed by such a statement. On the other hand, in addition to her clashes with Investigators Gwozdz and Nolan and the impediments she imposed to their investigation, Ms. Harrison made repeated disparaging statements displaying a basic distrust of DCF and its Investigators in front of all of those who were involved in, and/or those who witnessed the events on April 10, 2014.

As this matter arose at Ms. Harrison's home and not at work, the question arises whether her conduct was reasonably related to her fitness to perform her position pursuant to G.L. c. 31, s. 43. As an employee working at DCF, Ms. Harrison was fully aware of DCF's role and functions regarding the care and protection of children of the Commonwealth. Working in the DCF Legal Office in particular, Ms. Harrison was regularly involved in the legal efforts that go into ensuring that children will be protected against abuse and/or neglect. In complete contradiction of the essential function of the agency where she worked, Ms. Harrison allowed her grandchildren to live in deplorable and unsafe conditions and publicly undermined her agency's efforts to protect them. In view of the foregoing, DCF had just cause to discipline Ms. Harrison. While the Commission is authorized by G.L. c. 31, s. 43 to modify disciplinary action taken by an appointing authority under appropriate circumstances, there appear to be no such circumstances present in this case. There is no evidence that Ms. Harrison's termination was the result of bias or other improper motive.

One issue remains regarding Ms. Harrison's employment status prior to her termination. At that time, Ms. Harrison was in the position of Clerk V as the result of a provisional promotion. Ms. Harrison's permanent appointment was in the position of Clerk III as of 1999. Civil service rights vest in permanent, tenured civil service employees. G.L. c. 31, s. 1. For many years, the state's Human Resources Division (HRD) has been unable to conduct civil service examinations for non-public safety official service positions, such as Clerk V. Thus, agencies have been forced to make provisional appointments and promotions for these positions. The "plight of the provisionals" is most commonly used to refer to those individuals who have been unable to obtain a permanent appointment or promotion as a result of no examinations being administered for the position(s) in question. Applied here, DCF must have just cause to

terminate Ms. Harrison's employment. Absent just cause, Ms. Harrison would be entitled to retain her permanent Clerk II position. See McDowell v. Springfield, 23 MCSR 124 (2010)(provisionally promoted employee who is discharged without just cause or whose position was abolished shall be restored to his tenured position)(upheld by Superior Court but under further appeal); cf. Springfield v. Civ. Serv. Comm'n and another, Hampden Superior Court SUCV 100697 (2012)(*aff'd* in part and *rev'd* in part (as to timing of suspension) in City of Springfield v. Civil Service Commission and McDowell, SJC-11540 August 18, 2014 (case remanded to Superior Court for entry of order remanding case to Commission for further proceedings consistent with SJC opinion; Commission has not received Superior Court order). However, for all the reasons stated above, DCF did have just cause to terminate Ms. Harrison. In addition to housing her own grandchildren in deplorable and unsafe conditions necessitating their emergency removal under G.L. c. 119, s. 51B(3), Ms. Harrison's conduct undermined her employer's core mission to protect them and she repeatedly verbalized and displayed a lack of trust of her employer. In its termination letter to Ms. Harrison, DCF concluded, "Given the serious nature of this matter, the Department no longer has confidence in your ability to work with the Department to carry out its critical missions." Exhibit 2. Although the Appellant was disciplined based on the events relating to one day, it is clear that the conditions at her house preceded that date. Here, the employee's conduct is, in addition to being egregious, inimical to the crucial purpose of the employer to protect children.

Conclusion

For the reasons stated herein, the DCF had just cause to terminate Ms. Harrison's

employment. Therefore, Ms. Harrison's appeal filed under Docket No. D1-14-117 is hereby *denied*.

Civil Service Commission

_____/s/_____
Cynthia A. Ittleman, Esq., Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Stein and McDowell, Commissioners) on January 8, 2015.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice:
Neil Osborne, Esq. (for Appellant)
Donna Morin, Assistant Director of Labor Relations (for Respondent)